



March 17, 1999

Mr. Saul Pedregon
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
City Hall
Dallas, Texas 75201

OR99-0755

Dear Mr. Pedregon:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122771.

The Dallas Police Department (the "department") received a request for specific internal affairs investigations. You claim that the submitted investigative reports are excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

First, you claim that you may withhold the names of civilian witnesses based upon section 552.108. We disagree. Section 552.108(b) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution...if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" After reviewing your arguments, we conclude that you have not shown how releasing the witnesses' identities will interfere with law enforcement. Consequently, the department may not withhold any of the submitted information under section 552.108.

Next, you argue that some of the information in the investigative files is confidential under section 552.117(2). We agree. Section 552.117(2) of the Government Code provides that information is excepted from disclosure if it relates to a peace officer's home address, home telephone number, social security number, or reveals whether the peace officer has family members. Cf. Open Records Decision Nos. 622 (1994) (section 552.117 excepts from disclosure former home addresses and former home telephone numbers), 455 (1987). Thus, you must withhold this information as contained within the submitted documents.

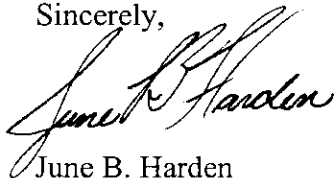
Some of the investigated employees are not peace officers, however, section 552.117(1) may protect some information concerning them. Section 552.117(1) of the Government Code

provides that information is excepted from disclosure if it relates to a current or former employee's home address, home telephone number, social security number, or reveals whether the employee has family members. Section 552.117(1) requires you to withhold this information if a current or former employee requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). The department may not, however, withhold this information for a current or former employee who made a request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989).

Finally, we note that some of the submitted information is protected from disclosure by a right of privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrine of common-law privacy. The doctrine of common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We have marked the information that is protected from disclosure under section 552.101. The remaining information must be released.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" and last name "Harden" clearly distinguishable.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

¹We note that the excepted information can be severed from the public information. *See* Gov't Code § 552.353 (providing penalties for failure to permit access to public information).

Ref.: ID# 122771

Encl. Marked documents; computer diskette

cc: Mr. Harold Cornish
601 Nora Lane
DeSoto, Texas 75115
(w/o enclosures)